MICHIGAN LAW REVIEW

PUBLISHED MONTHLY DURING THE ACADEMIC YEAR, EXCLUSIVE OF OCTOBER, BY THE
LAW SCHOOL OF THE UNIVERSITY OF MICHIGAN

SUBSCRIPTION PRICE $2.50 PER YEAR. 35 CENTS PER NUMBER

NOTE AND COMMENT

THE LAW SCHOOL.—The year 1919-1920 opens with 336 sudents enrolled. These are classified as follows: Third year—85; second year—97; first year —149; special—5. As compared with 65 enrolled a year ago the present attendance is gratifying. Preliminary applications point to a large number of entering students in February.

We regret to announce the resignations of Professor Stoner who has accepted a position with the Detroit Pressed Steel Company of Detroit, Michigan; and of Professor Barbour who has accepted a call to the faculty of the Yale Law School; Professor Edwin D. Dickinson, A.B. Carleton, A.M. Dartmouth, Ph.D. Harvard, J.D. Michigan, has been added to the faculty. Professor Dickinson, who was an editor of this Review, has made an enviable reputation for himself in the field of International Law, a course which he will give in the Law School.

Courses for the year are assigned as follows: Dean Bates—Constitutional Law and Torts; Professor Lane—Evidence, Conflict of Laws, and Insurance; Professor Wilgus — Torts and Corporations; Professor Goddard — Agency, Bailments and Carriers, Public Service Companies, Wills, and Property IV; Professor Sunderland—Trial Practice, Common Law Pleading, Code Pleading, and Practice Court; Professor Holborok—Mining Law, Irrigation Law, Municipal Corporations, Domestic Relations, and Administration Law; Professor Drake—Property I, Damages, Partnership, Roman Law, and Jurisprudence; Professor Aigler—Property II, Property III, and Bankruptcy; Pro-

fessor Durfee—Equity, Mortgages, Suretyship and Quasi Contracts; Professor Waite—Criminal Law, Sales, Bills and Notes, and Patent Law; Professor Dickinson—Trusts and Public International Law; Professor Grismore—Contracts.

During the year Mr. James A. Veasey, General Counsel of The Carter Oil Company, will deliver a special series of lectures on Oil and Gas Law. These lectures will appear in the Review.

THE SCINTILLA RULE OF EVIDENCE.—In analyzing the reasons why "trial by jury has declined to such an extent that it has come in many cases to be an avowed maxim of professional action,—a good case is for the court; a bad case is for the jury,"—JUDGE DILLON, in his LAWS AND JURISPRUDENCE, pp. 130-2, credits "the false principle known as the scintilla doctrine" with a large degree of responsibility.

The scintilla rule is essentially a medieval product. Scholasticism centered in logic, and the schoolmen contemplated everything in the glass of Aristotelian formulae. The syllogism was the great weapon of logical conquest, and the syllogism was deductive. It required a universal for its starting point. It exactly reversed the modern notion of looking to experience for data on which to build up general rules. It started with the general rule, which it derived abstractly. Once derived, it became, like the bed of Procrustes, the standard which experience must be forcibly made to fit. The doctor of laws in determining what cases should go to the jury, and the doctor of theology in deciding what souls should be saved, would apply an identical principle—conformity to a preconception. The fact that in either case the result might be unreasonable was of no consequence. It was heresy to deny the premise and folly to deny the conclusion.

The preconception on which the scintilla rule rests is that all questions of fact must go to the jury. And the reason for this is that it is a maxim of the common law that *"ad quaestionem facti non respondent judices."* The scholastic mind is satisfied with this reason. It is based on authority; it keeps practice subordinate to theory and thus maintains the medieval conception of the ascendency of the universal over the individual; it offers the infallible test of logic instead of the uncertain test of experience.

The essence of the scintilla rule is the total elmination of the question of the weight of the evidence from the consideration of the court. All relevant evidence should look alike, for the court, endowed only with a vision for the universal, can see in all evidence only a question of relevancy. It stands indifferent between the most convincing evidence on one side and the weight of a hair on the other. The court, being the instrumentality of logic, not common sense, is not expected or allowed to apply any rule but the rule of logic. Hence nothing is judicially absurd unless it is illogical, no matter how absurd it may be in its practical results.

The scintilla rule is seldom followed by modern courts. THOMPSON says it is "hardly mentioned by any court but to be repudiated." TRIALS, Sec.